

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
BOBBY JO KISSEL,  
  
Defendant.

Case No. 3:18-cr-00066-HDM-WGC  
  
ORDER FOR SENTENCE REDUCTION  
PURSUANT TO  
18 U.S.C. § 3582(c)(1)(A)

Defendant Bobby Jo Kissel has filed two motions for sentence modification pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF Nos. 115 & 119). Kissel seeks an 18-month term of supervised release with home detention in lieu of her prison sentence. Probation does not oppose, and the government takes no position on, Kissel's request. (ECF Nos. 117 & 120).

On August 8, 2018, Kissel's co-defendant, James Jimmy Evans, Sr., was charged by way of indictment with several drug trafficking crimes in violation of 21 U.S.C. § 841, as well as other crimes. (ECF No. 1). Kissel was named alongside Evans in Count Three of the indictment, which charged possession with intent to distribute a mixture or substance containing 50 grams or more of methamphetamine. (*Id.*) Ultimately, Kissel entered a plea of guilty to the sole count of a superseding information that charged her with misprision of a felony in violation of 18 U.S.C. § 4.

On March 4, 2020, the court sentenced Kissel to 18 months in prison, to be followed by a one-year term of supervised release. (ECF No. 94). Kissel was ordered to self-surrender on June 2, 2020, to begin her prison term. The court has since extended this date four times in light of the COVID-19 epidemic, Kissels' underlying health conditions, and the lack of opposition by either the government or Probation. Kissel's current date to self-surrender is January 8, 2021.

18 U.S.C. § 3582(c)(1)(A) provides in relevant part:

[T]he court, . . . upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction;

. . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.<sup>1</sup>

U.S.S.G. § 1B1.13 provides:

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a

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<sup>1</sup> In addition to "extraordinary and compelling reasons," the court may grant a motion if "the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g)." 18 U.S.C. § 3582(c)(1)(A)(ii). Because Kissel is not over 70 years of age and has not served more than thirty years in prison, this provision does not apply.

1 term of imprisonment (and may impose a term of supervised  
2 release with or without conditions that does not exceed  
3 the unserved portion of the original term of  
imprisonment) if, after considering the factors set  
forth in 18 U.S.C. § 3553(a), to the extent that they  
are applicable, the court determines that—

4 (1)(A) extraordinary and compelling reasons warrant  
5 the reduction;

6 . . .

7 (2) the defendant is not a danger to the safety of  
any other person or to the community, as provided in 18  
8 U.S.C. § 3142(g); and

9 (3) the reduction is consistent with this policy  
statement.

10 U.S.S.G. § 1B1.13.

11 The defendant is not entitled to be present for a hearing on  
12 a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

13 Section 1B1.13 sets forth specific examples of "extraordinary  
14 and compelling reasons," including in relevant part that the  
15 defendant is "suffering from a serious physical or medical  
16 condition . . . that substantially diminishes the ability of the  
17 defendant to provide self-care within the environment of a  
18 correctional facility and from which he or she is not expected to  
19 recover." U.S.S.G. § 1B1.13 app. n.(1)(A)(ii)(I). There is also a  
20 catch-all provision, which provides: "As determined by the  
21 Director of the Bureau of Prisons, there exists in the defendant's  
22 case an extraordinary and compelling reason other than, or in  
23 combination with, the reasons described in subdivisions (A)  
24 through (C)." *Id.* app. n.(1)(D).

25 Kissel seeks a modification to her sentence pursuant to  
26 § 3582(c)(1)(A) due to the COVID-19 epidemic and her underlying  
27 health conditions, which put her at greater risk of severe COVID-  
28 19 complications should she contract the virus. Her conditions

1 also require ongoing medical treatment. The government takes no  
2 position on Kissel's request.<sup>2</sup>

3 Kissel has a history and current diagnosis of severe  
4 persistent asthma, which is currently being treated by monthly  
5 injections, as well as a recent diagnosis of menorrhagia, which  
6 will likely require further significant treatment. Kissel's  
7 condition of severe persistent asthma puts her at great risk of a  
8 severe COVID-19 outcome should she contract the virus. The court  
9 finds that Kissel's high risk of severe COVID-19 outcomes, coupled  
10 with the significant medical treatment she is currently undergoing  
11 and will require, constitute extraordinary and compelling reasons  
12 justifying a sentence modification in this case.

13 The court further finds that Kissel is not a danger to the  
14 community and that a reduction in sentence to include home  
15 detention is supported by the applicable 18 U.S.C. § 3553(a)  
16 factors, including the nature and circumstances of the offense and  
17 the history and characteristics of the defendant; the need for the  
18 sentence to reflect the seriousness of the offense, to promote  
19 respect for the law, and to provide just punishment for the  
20 offense, to afford adequate deterrence to criminal conduct, and to  
21 protect the public from further crimes of the defendant; and the  
22 need to avoid unwarranted sentence disparities among defendants  
23 with similar records who have been found guilty of similar conduct.

24 In accordance with the foregoing, IT IS THEREFORE ORDERED  
25 that Kissel's unopposed motions for a sentence modification  
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27 <sup>2</sup> Although § 3582(c)(1)(A) requires a defendant to first exhaust his or  
28 her request before filing a motion with the court, the government has  
not asserted a lack of exhaustion in this case.

1 pursuant to 18 U.S.C. § 3582(c)(1)(A) (ECF Nos. 115 & 119) are  
2 hereby GRANTED.

3 IT IS FURTHER ORDERED that the judgment shall be modified to  
4 a sentence of time served, followed by a special term of supervised  
5 release for a period of six months, in lieu of the current prison  
6 sentence, pursuant to the provisions of 18 U.S.C. § 3582(c)(1)(A).  
7 The originally imposed twelve months of supervised release will  
8 commence upon expiration of the six-month special term of  
9 supervised release.

10 All conditions of the original term of supervised release  
11 will remain the same. The conditions of the special term of  
12 supervised release will include all those applicable to the  
13 original term, in addition to the following terms:

14 1. Home Confinement with Location Monitoring - You will be  
15 monitored by the form of location monitoring technology at the  
16 discretion of the probation officer for a period of six months,  
17 and you must follow the rules and regulations of the location  
18 monitoring program. You must pay the costs of the program based on  
19 your ability to pay.

20 This form of location monitoring technology will be used to  
21 monitor the following restriction on your movement in the  
22 community:

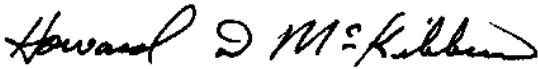
23 You are restricted to your residence at all times except for  
24 employment; education; religious services; medical, substance  
25 abuse, or mental health treatment; attorney visits; court  
26 appearances; court-ordered obligations; or other activities as  
27 pre-approved by the probation officer (Home Detention).

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1 IT IS FURTHER ORDERED that an amended judgment will be entered  
2 forthwith.

3 IT IS SO ORDERED.

4 DATED: This 5th day of January, 2021.

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7 UNITED STATES DISTRICT JUDGE  
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